

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BATS Rule 11.16, entitled “LIMITATION OF LIABILITY,” to codify that it may provide a form of compensation for losses sustained in relation to an Exchange system failure or a negligent act or omission of an Exchange employee. The Exchange has designated this proposal as non-controversial and requests that the Commission waive the notice requirement set forth in Rule 19b-4(f)(6)(iii) under the Act.³ The Exchange also requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁴ If such waiver is granted by the Commission, the Exchange shall implement this rule proposal immediately upon commencement of its operations as a national securities exchange.

(a) The text of the proposed rule change is below. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

* * * * *

Rule 11.16. LIMITATION OF LIABILITY

(a) – (c) (No changes.)

(d) NOTWITHSTANDING PARAGRAPH (a) ABOVE, AND SUBJECT TO THE EXPRESS LIMITS SET FORTH BELOW, THE EXCHANGE MAY

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

⁴ Id.

COMPENSATE MEMBERS FOR LOSSES RESULTING DIRECTLY FROM THE MALFUNCTION OF THE EXCHANGE'S PHYSICAL EQUIPMENT, DEVICES AND/OR PROGRAMMING OR THE NEGLIGENT ACTS OR OMISSIONS OF ITS EMPLOYEES.

(1) AS TO ANY ONE OR MORE CLAIMS MADE BY A SINGLE MEMBER UNDER THIS RULE ON A SINGLE TRADING DAY, THE EXCHANGE SHALL NOT BE LIABLE IN EXCESS OF THE LARGER OF \$100,000, OR THE AMOUNT OF ANY RECOVERY OBTAINED BY THE EXCHANGE UNDER ANY APPLICABLE INSURANCE MAINTAINED BY THE EXCHANGE.

(2) AS TO THE AGGREGATE OF ALL CLAIMS MADE BY ALL MEMBERS UNDER THIS RULE ON A SINGLE TRADING DAY, THE EXCHANGE SHALL NOT BE LIABLE IN EXCESS OF THE LARGER OF \$250,000 OR THE AMOUNT OF ANY RECOVERY OBTAINED BY THE EXCHANGE UNDER ANY APPLICABLE INSURANCE MAINTAINED BY THE EXCHANGE.

(3) AS TO THE AGGREGATE OF ALL CLAIMS MADE BY ALL MEMBERS UNDER THIS RULE DURING A SINGLE CALENDAR MONTH, THE EXCHANGE SHALL NOT BE LIABLE IN EXCESS OF THE LARGER OF \$500,000, OR THE AMOUNT OF ANY RECOVERY OBTAINED BY THE EXCHANGE UNDER ANY APPLICABLE INSURANCE MAINTAINED BY THE EXCHANGE.

(e) IN THE EVENT THAT ALL OF THE CLAIMS MADE UNDER THIS RULE CANNOT BE FULLY SATISFIED BECAUSE IN THE AGGREGATE THEY EXCEED THE APPLICABLE MAXIMUM LIMITATIONS PROVIDED IN THIS RULE, THEN THE MAXIMUM PERMITTED AMOUNT WILL BE PROPORTIONALLY ALLOCATED AMONG ALL SUCH CLAIMS ARISING ON A SINGLE TRADING DAY OR DURING A SINGLE CALENDAR MONTH, AS APPLICABLE, BASED ON THE PROPORTION THAT EACH SUCH CLAIM BEARS TO THE SUM OF ALL SUCH CLAIMS.

(f) ALL CLAIMS FOR COMPENSATION PURSUANT TO THIS RULE SHALL BE IN WRITING AND MUST BE SUBMITTED NO LATER THAN THE OPENING OF TRADING ON THE NEXT BUSINESS DAY FOLLOWING THE DAY ON WHICH THE USE OF THE EXCHANGE GAVE RISE TO SUCH CLAIMS. ONCE IN RECEIPT OF A CLAIM, THE EXCHANGE WILL VERIFY THAT: (i) A VALID ORDER WAS ACCEPTED INTO THE EXCHANGE'S SYSTEMS; AND (ii) AN EXCHANGE SYSTEM FAILURE OR A NEGLIGENT ACT OR OMISSION OF AN EXCHANGE EMPLOYEE OCCURRED DURING THE EXECUTION OR HANDLING OF THAT ORDER.

* * * * *

- (b) Not applicable.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on August 28, 2008. This action constitutes requisite approval under the Exchange's By-Laws.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (212) 378-8523.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) Purpose

The Exchange proposes to amend Rule 11.16 to establish a procedure to compensate Members⁵ in relation to Exchange systems failures or a negligent act or omission of an Exchange employee. The Exchange recognizes that the current industry practice of exchanges that function as SROs is to provide a form of compensation for losses sustained in relation to the use of the exchanges' systems, and that some exchanges also provide a form of compensation for negligence by the exchanges' employees. As such, the Exchange seeks to amend BATS Rule 11.16 to conform to current industry practice.

Pursuant to the proposed amendment to Rule 11.16, the Exchange would compensate Members for losses resulting directly from: (i) the malfunction of the Exchange's physical equipment, devices, and/or programming, or (ii) the negligent acts

⁵ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

or omissions of the Exchange's employees.⁶ Under this proposed rule change, for such malfunctions or negligence, the Exchange would cap its liability: (i) to a single Member at the greater of \$100,000 or the amount recovered under any applicable insurance policy on a single trading day, (ii) to all Members at the greater of \$250,000 or the amount recovered under any applicable insurance policy on a single trading day, and (iii) to all Members at the greater of \$500,000 or the amount recovered under any applicable insurance policy in a single calendar month.

To the extent that all claims resulting from systems failures or negligence by Exchange employees cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for, then the Exchange proposes to allocate the maximum amount among all such claims arising on a single trading day or during a single calendar month, as applicable, based on the proportion that each such claim bears to the sum of all such claims.

In order for a Member to be eligible to receive payment, claims must be made in writing and must be submitted no later than the opening of trading on the next business day following the day on which the use of the Exchange gave rise to such claims. Once in receipt of a claim, the Exchange will verify that: (i) a valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure or a negligent act or omission of an Exchange employee occurred during the execution or handling of that order. If all the

⁶ The Exchange represents that the determination as to whether a Member is compensated or not will be made on an equitable and non-discriminatory basis without regard to the status of that Member, e.g., regardless of whether that Member is registered as a Market Maker with the Exchange.

criteria for submitting a claim have been met, the claim will be qualified for processing with all other claims at the end of the calendar month in which the incident occurred.

(b) Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁷ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,⁸ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by providing more certainty as to the Exchange's potential liability resulting from systems problems and negligence by Exchange employees.

4. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

As described below, the proposed rule change is substantially similar to the rules of other self-regulatory organizations that have previously been approved by the Commission.⁹ Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁰ and paragraph (f)(6) of Rule 19b-4 thereunder.¹¹ The Exchange believes that the proposed rule change should take effect immediately upon filing because it will effect a change that: (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) and does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The Exchange requests that the Commission waive the requirement to provide written notice to the Commission of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.¹²

⁹ See, e.g., Securities Exchange Act Release No. 34-53128 (January 13, 2006), 71 FR 3350 (January 23, 2006) (File No. 10-131); Securities Exchange Act Release No. 34-57675 (April 17, 2008), 73 FR 21996 (April 23, 2008) (SR-ISE-2008-15); see also Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144, 40149 (July 11, 2008) (where the Commission stated that a rule change proposal may be designated as immediately effective if “each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange’s rule (that was subject to notice and comment) pursuant to Section 19(b)(2) of the Exchange Act, and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.”)

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4.

¹² 17 CFR 240.19b-4(f)(6)(iii).

Because the Exchange anticipates that it may commence operations as a national securities exchange sooner than 30 days from the date of this filing, and because the proposed rule change is non-controversial, the Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.¹³ Waiver of this requirement is consistent with the protection of investors and the public interest because it will provide more certainty as to the Exchange's potential liability resulting from systems problems and negligence by Exchange employees upon commencement of its operations as a national securities exchange.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

The Exchange is proposing to add new paragraphs (d) through (f) to its existing BATS Rule 11.16. The proposed new language contained in this rule change proposal has been based on similar rules that are already in place at NYSE Arca Equities, Inc. ("NYSE Arca"),¹⁴ the NASDAQ Stock Market, Inc. ("NASDAQ"),¹⁵ and the International Securities Exchange, LLC ("ISE").¹⁶ Specifically, proposed paragraph (d) of BATS Rule 11.16 is based on ISE Rule 705(d). In fact, paragraph (d) is identical to ISE Rule 705(d), except that the Exchange has added language from NYSE Arca Rule 13.2(b) that will allow the Exchange to compensate Members for losses resulting directly from negligent acts or omissions by Exchange employees. Proposed sub-paragraphs (1) through (3) under BATS Rule 11.16(d) are based on and substantially similar to NYSE

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ See NYSE Arca Equities Rule 13.2

¹⁵ See NASDAQ Rule 4626.

¹⁶ See ISE Rule 705.

Arca Rule 13.2(b), sub-paragraphs (1) through (3), with the only difference being the applicable term used to define each exchange's members (NYSE Arca uses the term "ETP Holders", whereas BATS uses the term "Members"). In addition, the amounts of permissible compensation contained in proposed sub-paragraphs (1) through (3) under BATS Rule 11.16(d) are identical to those contained in NASDAQ Rule 4626(b)(1) through (3). Paragraph (e) of BATS Rule 11.16 is based on ISE Rule 705(d)(2), and addresses situations where claims subject to the rule cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for under the rule. However, because ISE's Rule 705 differs from the rules of NASDAQ and NYSE Arca (as well as proposed BATS Rule 11.16) with respect to the amount of permissible compensation under the applicable rule,¹⁷ paragraph (e) of BATS Rule 11.16 also incorporates language from NYSE Arca Rule 13.2(c) and NASDAQ Rule 4626(b)(4). Finally, paragraph (f) of BATS Rule 11.16 is based on ISE Rule 705(d)(3), and the only difference between the two rules is the reference to potential liability for negligent acts or omissions by Exchange employees in proposed paragraph (f) of BATS Rule 11.16.

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 5: Not applicable.

¹⁷ NASDAQ and NYSE Arca each have different levels of compensation, which the Exchange has mirrored in its proposed rule change (i.e., \$100,000 for a single member during a single trading day, \$250,000 for all members during a single trading day, and \$500,000 for all members during a single calendar month). By contrast, ISE limits compensation to \$250,000 for all participants during a single trading day.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2008-008)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Limitation of Liability.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 20, 2008, BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. BATS has requested that the Commission waive the 5-day notice requirement and the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁴ If such waivers are granted by the Commission, the Exchange will implement this rule proposal immediately upon commencement of its operations as a national securities exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Id.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.16, entitled "LIMITATION OF LIABILITY," to codify that it may provide a form of compensation for losses sustained in relation to an Exchange system failure or a negligent act or omission of an Exchange employee.

The text of the proposed rule change is available at the Exchange's website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.16 to establish a procedure to compensate Members⁵ in relation to Exchange systems failures or a negligent act or omission of an Exchange employee. The Exchange recognizes that the current industry practice of exchanges that function as SROs is to provide a form of compensation for

⁵ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

losses sustained in relation to the use of the exchanges' systems, and that some exchanges also provide a form of compensation for negligence by the exchanges' employees. As such, the Exchange seeks to amend BATS Rule 11.16 to conform to current industry practice.

Pursuant to the proposed amendment to Rule 11.16, the Exchange would compensate Members for losses resulting directly from: (i) the malfunction of the Exchange's physical equipment, devices, and/or programming, or (ii) the negligent acts or omissions of the Exchange's employees.⁶ Under this proposed rule change, for such malfunctions or negligence, the Exchange would cap its liability: (i) to a single Member at the greater of \$100,000 or the amount recovered under any applicable insurance policy on a single trading day, (ii) to all Members at the greater of \$250,000 or the amount recovered under any applicable insurance policy on a single trading day, and (iii) to all Members at the greater of \$500,000 or the amount recovered under any applicable insurance policy in a single calendar month.

To the extent that all claims resulting from systems failures or negligence by Exchange employees cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for, then the Exchange proposes to allocate the maximum amount among all such claims arising on a single trading day or during a single calendar month, as applicable, based on the proportion that each such claim bears to the sum of all such claims.

⁶ The Exchange represents that the determination as to whether a Member is compensated or not will be made on an equitable and non-discriminatory basis without regard to the status of that Member, e.g., regardless of whether that Member is registered as a Market Maker with the Exchange.

In order for a Member to be eligible to receive payment, claims must be made in writing and must be submitted no later than the opening of trading on the next business day following the day on which the use of the Exchange gave rise to such claims. Once in receipt of a claim, the Exchange will verify that: (i) a valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure or a negligent act or omission of an Exchange employee occurred during the execution or handling of that order. If all the criteria for submitting a claim have been met, the claim will be qualified for processing with all other claims at the end of the calendar month in which the incident occurred.

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).⁷ In particular, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,⁸ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by providing more certainty as to the Exchange's potential liability resulting from systems problems and negligence by Exchange employees.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

⁷ 15 U.S.C. 78(f)(b).

⁸ 15 U.S.C. 78f(b)(5).

(C) Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change is non-controversial and does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Furthermore, the Exchange believes that the proposed rule change will make Rule 11.16 substantially similar to the rules of other self-regulatory organizations that have previously been approved by the Commission.¹¹

Because the Exchange anticipates that it may commence operations as a national securities exchange sooner than 30 days from the date of this filing, and because the proposed rule change is non-controversial, the Exchange has requested that the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ See, e.g., Securities Exchange Act Release No. 34-53128 (January 13, 2006), 71 FR 3350 (January 23, 2006) (File No. 10-131); Securities Exchange Act Release No. 34-57675 (April 17, 2008), 73 FR 21996 (April 23, 2008) (SR-ISE-2008-15); see also Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144, 40149 (July 11, 2008) (where the Commission stated that a rule change proposal may be designated as immediately effective if “each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange’s rule (that was subject to notice and comment) pursuant to Section 19(b)(2) of the Exchange Act, and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.”)

Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.¹² The Exchange represents that waiver of this requirement is consistent with the protection of investors and the public interest because it will provide more certainty as to the Exchange's potential liability resulting from systems problems and negligence by Exchange employees upon commencement of its operations as a national securities exchange.

In light of the foregoing, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission has determined to waive the operative delay, and the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,¹³ and Rule 19b-4(f)(6) thereunder,¹⁴ with no operative delay.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 15 U.S.C. 78s(b)(3)(A)

¹⁴ 17 CFR 240.19b-4(f)(6).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2008-008 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2008-008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2008-008 and should be submitted on or before [_____21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Acting Secretary

¹⁵ 17 CFR 200.30-3(a)(12).